

Privacy Rights Clearinghouse

3100 – 5th Ave., Suite B
San Diego, CA 92103

Voice: (619) 298-3396 E-mail: bgivens@privacyrights.org
Fax: (619) 298-5681 Web: www.privacyrights.org

May 11, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Filed electronically: www.fcc.gov/cgb/ecfs

RE: ACA International Petition for Expedited Clarification – Docket No. 02-278

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/E6-6022.htm>

Dear Secretary Dortch:

The Privacy Rights Clearinghouse (PRC)¹ appreciates the opportunity to comment, opposing ACA International's (ACA)² Petition. The ACA asks the Federal Communications Commission (FCC or Commission) to exempt debt collectors from cell phone privacy rules adopted under the Telephone Consumer Protection Act (TCPA).³ We urge the Commission to deny this Petition. We direct our comments as follows:

1. Introduction
2. ACA's Petition
3. Why Consumers Use Cell Phones
4. Collectors Should Not Use Autodialers to Call Cell Phones
5. Conclusion

¹ The Privacy Rights Clearinghouse (PRC) is a nonprofit consumer education and advocacy organization based in San Diego, CA, and established in 1992. The PRC advises consumers on a variety of informational privacy issues, including financial privacy, medical privacy and identity theft, through a series of fact sheets as well as individual counseling available via telephone and email. It represents consumers' interests in legislative and regulatory proceedings on the state and federal levels. www.privacyrights.org

² According to the Petition, ACA is a trade organization representing approximately 5,800 credit and collection companies.

³ Hundreds of ACA's member companies have filed comments with the FCC supporting the Petition. Member comments are largely repetitious and do not outweigh the underrepresented consumer perspective.

1. Introduction

The Telephone Consumer Protection Act (TCPA) and the FCC's implementing rules prohibit telephone calls to cell phones using an automatic dialing system or prerecorded messages.⁴ The only exception is for emergency calls or calls made with the prior consent of the called party. The TCPA and the Commission's rules also prohibit using such means to contact a paging service, specialized mobile radio service, or other radio common carrier service for which the *called party is charged for the call*.

The ACA's Petition and supporting comments filed by numerous member companies ask the Commission to carve an exception for collection agencies. The Petition should be rejected and the privacy protections given to cell phone users under the TCPA left to stand.

2. ACA's Petition

ACA's Petition asks the Commission to declare that the section prohibiting autodialed calls to cellular phones does not apply to debt collectors. ACA's numerous member companies have filed comments in support of the Petition saying (1) the Commission previously allowed autodialers for collections and (2) the uncertainty about the use of autodialers is causing substantial harm to the collection industry. ACA and its member companies also claim that the TCPA applies only to telemarketing calls.

Collectors, the Petition says, face potential injury from this uncertainty, including the risk of "civil litigation and the risk of government enforcement by the Commission."⁵ From industry comments, it is obvious that collectors *now* use autodialers. Comments received opposing the Petition indicate that autodialers and prerecorded messages are *now* being used to call cellular phones.⁶ Thus, the industry is asking the Commission to sanction an existing practice, despite the uncertainty it says stems from the Commission's rules issued in 2003. The Commission should not grant retroactive immunity for this practice but should instead initiate an investigation.

Besides, were the Commission to allow debt collectors to use autodialers without consumer consent, other interests that are exempt from the national do-not-call registry could reasonably claim that they too should be able to use autodialers to call cellular phones. Not all unwanted calls are telemarketing calls. And, the TCPA

⁴ As noted in the Commission's Public Notice and Federal Register Notice, the rules incorporate the language of the TCPA virtually verbatim. 71 FedReg 21634 (April 26, 2006)

⁵ Petition, pg. 10.

⁶ See e.g. Comments of Stang, pg. 2; Shields, pg. 9; and Mey, pg. 3.

does not limit itself solely to telemarketing. For example, at election time landline numbers are overwhelmed with autodialed, prerecorded calls. Many consumers object to these calls as well as numerous calls from charities or callers claiming to be conducting a “survey.” Allowing these autodialed calls in addition to often misdirected calls made by debt collectors would truly be a costly nightmare for cell phone users.

The ACA is correct about some things. The Federal Reserve Board (FRB) has indeed reported a dramatic increase in the dollar amount of past due accounts. What the ACA does not acknowledge is that the FRB also reported that medical bills account for over half of the collections listed on consumers’ credit reports.⁷ Other unforeseen circumstances such as job loss or divorce may also account for a significant portion of unpaid debt.

Dramatic increases in unpaid debts have no doubt swelled the ranks of ACA’s membership to its current 5,800 members. But, the Petition does not address the role of aggressive credit marketing in the rise of collection actions. Nor does it address the number of companies involved in the collection industry.

Many debtors now hounded by collectors, frankly, should not have been extended credit in the first instance. Creditors, after all, approve a credit card or installment loan based on risk factors. Consumers with a low credit score who actually meet their obligations pay dearly for the “privilege” of driving a new car or carrying a credit card.

Others, perhaps enticed by aggressive credit advertising for “no money down,” “bad credit okay,” or “no payments or interest” often for years, may lose the intention to repay shortly after the ink has dried on the application. Surely, collecting from such folks is a tough business — although one of choice. And, like the Petition says, some people have unpaid debt just because they’re overextend.⁸ This is, again, a risk calculation left to the creditor.

The ACA does not explain, nor can one imagine, how a person with no intent to repay a debt or one that does not have the means to repay, could be persuaded otherwise by autodialed calls to a cellular phone. Common sense says such calls

⁷ “The majority of collection actions (about 52 percent) are associated with medical bills. The high incidence of collections related to medical bills is not surprising given both the large number of individual consumers and families that have partial or no health insurance coverage and the high cost of many medical services.” An Overview of Consumer Data and Credit Reporting, Federal Reserve Board, 2003, pg. 69, www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf

⁸ “...the greatest increases in consumer debt are traced to consumers with the least amount of disposal income to replay their obligations.” Petition, pg. 7.

would be more effective as a tool of harassment or intimidation than an effective collection tool.

If the ACA and its member companies seek relief, looking to its creditor-clients is certainly an option. Creditors could easily make the consumer's consent to autodialed calls, in the event of default, a condition of granting credit. That way, creditors and collectors could operate, *without uncertainty*, within the limits of the TCPA and the Commission's implementing rules. This, too, would leave privacy intact -- something that cell phone users expect is now ensured by the TCPA and Commission rules.

3. Why Consumers Use Cell Phones

Privacy is often a major factor when one chooses a cell phone instead of a landline. A consumer who uses a cell phone can control access by giving the number to only a select group. Many consumers purchase a cell phone for use only in the event of a roadside or other emergency. For many, use of a cell phone is a way to avoid privacy intrusions created by unwanted calls that can stem from publicly available directories or look-up web sites for landline numbers.

Consumers who are concerned about privacy have good reason to choose a cell phone over a landline. Even when listed with the national Do-Not-Call Registry, landline users continue to get unwanted calls from exempt politicians, those claiming to conduct a survey, charities, and obvious fraudsters. Consumers know that landline numbers are easily accessible from public sources like voting records, property records, and telephone directories.

Marketing "lead lists," compiled by data brokers from any number of sources, are readily available to anyone over the Internet. Simply enter a name into one of the many Internet look-up sites, and in less than a second, one can get the person's landline number. And, today, paying extra for an unlisted number is little assurance that the number will not appear on the Internet. In short, consumers, with good reason, have low privacy expectations when it comes to the use of a landline. A majority of consumers now choose cellular telephones to control who calls them and when.

Consumers as well as the mobile phone industry itself hold fast when it comes to putting cell phone numbers on the same plane as landline numbers. Efforts to establish a cellular phone directory, even one that promised an opt-in and access only through an operator, have been stalled. Initial interest in convenience offered by a cell phone directory has been trumped by privacy concerns expressed by the public, consumer advocates, and the cell phone industry.

The “special” relationship between a cell phone and user was best expressed recently by a spokesperson for Verizon, who, when asked about a cell phone directory, was quoted as saying, "It's a really bad idea. The zone of privacy that's unique to wireless would just be torn up." ⁹ Surely, this unique zone of privacy is the very reason automatic dialers and prerecorded messages are prohibited for cellular phone contacts, pagers and other devices consumers choose to use for limited purposes. For most people, the added privacy is well worth the extra costs, even the cost of incoming calls.

4. Collectors Should Not Use Autodialers to Call Cell Phones

Debt collection by its very nature is an industry that generates many consumer complaints. The Fair Debt Collection Practices Act (FDCPA) sets certain limits on collection practices. Consumer complaints are most often directed to the Federal Trade Commission (FTC), and each year the FTC reports to Congress with updates on consumer debt collection complaints. The most recent FTC Report showed an increase in numbers over prior years.¹⁰

A chief source of consumer complaints reported by the FTC is debt collector contacts with someone other than the targeted debtor. Complaints include calls to employers. And complaints from family members, friends and others who receive frequent calls from collectors are common. This happens even though the FDCPA only allows a collector to contact a third-party once to locate the debtor.. But, the most offensive, objectionable collection calls are those repeatedly made to consumers who do not even know the person the collector is attempting to reach.

Instances such as this are reported in comments received by the Commission opposing the ACA's Petition to use autodialers to call cell phones. The PRC¹¹ has also received numerous complaints from individuals who have no relationship to the debtor, yet are contacted repeatedly by aggressive collectors. In the last two years, over 500 consumers have contacted the PRC with complaints about debt collectors.

Following are some excerpts from consumers who have recently contacted the PRC via e-mail (incorrectly spelled words are left intact):

⁹ “Please Hold: Wireless 411,” Joanna Glasner, Wired News, April 18, 2006.
www.wired.com/news/technology/wireless/0,70620-0.html?tw=wn_index_3

¹⁰ Federal Trade Commission, Annual Report 2006: Fair Debt Collection Practices Act,
<http://www.ftc.gov/os/2006/04/P0648042006FDCPAReport.pdf>

¹¹ In keeping with its consumer education goals, the PRC has published a guide for consumers faced with debt collection questions. *Debt Collection Practices: When Hardball Tactics Go Too Far*,
www.privacyrights.org/fs/fs27-debtcoll.htm

I keep getting calls from a 800 service. SOmetimes the numbers show up on my caller Id as 877 and sometimes 866. I called one of the numbers and found out that the calls are coming from a collection agency looking for someone. The person they are seeking is not me and I have no idea who they are looking for. My phone number rings throughtout the day and night. I need some help eliminating these calls. (4/20/06)

This compmany calls here every day asking for a XXX and there is NOBODY here by that name. I keep telling them the same answer everyday. Then I started asking them not to call here anymore and they keep calling. Finally today I had it. I asked for the supervisor and he tried telling me I was lying because he spoke with a XX 30 days ago and then he tried saying I was XXX. I told him he was insane and that I was going to call the police if they continue to harass my household. He said ' you go ahead and do that. They love to pley with their sirens' Then I asked for his number and he said I am not going to give that to you'. I relaized I had it on caller ID. His name is XXX with XXX and their number is XXX. What can be done? (4/5/06)

A collection agency working for the telephone company XXX has regularly been calling my telephone number in the belief that a deadbeat on their lists lives here. It concerns a bill of about \$130. Sometimes these calls come early in the AM (like 7:15 today). My wife and I have patiently explained that the person they are calling does not live here. We never heard of the guy. So will they please strike our number off their lists, because they have the wrong number -- or the deadbeat used to have our number or gave a false number (3/16/06)

Someone is giving my cell phone number to credit bureaus and I get calls for this person at least twice a week. I have told them that this is my cell phone and it has been for over a year and one woman told me that it was jsut given to them in February. How can I make this stop - I have good credit and am sick of being harassed my creditors. (3/9/06)

Misdirected calls are intrusive enough when made to a landline. But calls to a cell phone not only invade the “zone of privacy,” but also mean the victim pays for the intrusion. This is precisely the sort of thing the TCPA and the Commission’s rules intended to prevent.

5. Conclusion

Certainly, the high level of consumer debt is a troubling national statistic. The cause can be traced to any number of factors, including costs of medical care, unexpected job loss, and the “lend-now, collect later” attitude of some aggressive

lenders. But, ACA's Petition does not offer a solution to unpaid debt or reason for the Commission to grant ACA's Petition and sanction autodialing to cell phones.

What is to be gained by the ACA and its member companies, it seems, is the Commission's approval to continue an existing practice. The Commission should deny ACA's Petition and uphold the privacy protections for cell phone users given in the TCPA and the Commission's rules.

Again, we appreciate the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Beth Givens". The signature is fluid and cursive, with the first name "Beth" and last name "Givens" clearly distinguishable.

Beth Givens, Director
Tena Friery, Research Director

Privacy Rights Clearinghouse
3100 5th Ave., Suite B
San Diego, CA 92103
www.privacyrights.org